

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           THE MONTANA HRDC  
7           DIRECTORS ASSOCIATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the Commissioner  
12 of Political Practices (Commissioner) to consider the appeal of the principal  
13 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-  
14 306, the principal appealed the Commissioner's assessment of a civil penalty  
15 resulting from its late filing of a lobbying disclosure report. The principal filed a  
16 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17 written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in the  
19 Commissioner's file, and the applicable law, the Commissioner makes the following  
20 findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. The Montana HRDC Directors Association is a principal registered with the  
23 Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
26 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed  
27 against any person who fails to file lobbying disclosure reports within the time  
required by law.

1       3. A 2006 calendar-year-end lobbying disclosure report for the Montana HRDC  
2 Directors Association was required to be filed no later than February 15, 2007. The  
3 Commissioner's office requires the report to be filed on form L-5B.

4       4. The initial 2007 lobbying disclosure report for the Montana HRDC Directors  
5 Association was required to be filed no later than February 15, 2007.

6       5. On January 29, 2007 the office of the Commissioner sent an email to all  
7 principals, including the Montana HRDC Directors Association. The email advised  
8 principals that a lobbying financial disclosure report covering the month of January,  
9 2007 was required to be filed by February 15, 2007. The email referenced the  
10 appropriate form that was required to be filed, known as a form L-5A, and noted  
11 that it was available for download on the Commissioner's website. Citing the  
12 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
13 office even though neither lobbying nor incurring of lobbying expenses may have  
14 occurred."

15       6. The Montana HRDC Directors Association failed to file its L-5A on or before  
16 February 15, 2007.

17       7. On February 20, 2007, the Commissioner sent a letter to principal authority  
18 Bob Buzzas stating that the January L-5A report was due February 15, 2007, but had  
19 not been received. The letter stated that a civil penalty started being assessed on  
20 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
21 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
22 delinquent report immediately, followed by a hard copy.

23       8. On February 21, 2007, the principal filed its initial 2007 lobbying disclosure  
24 report. Because the report was filed 3 business days late (Monday, the 19<sup>th</sup> being a  
25 holiday), a \$150 civil penalty was assessed.

1 9. Later in the day on February 21, 2007, CPP Program Manager Mary Baker  
2 telephoned the Montana HRDC Directors Association regarding the late report. At  
3 that time she learned through conversation with principal authority Bob Buzzas that  
4 the initial 2007 lobbying disclosure report filed that day erroneously also included  
5 the data that was required in the 2006 calendar-year-end lobbying disclosure report.  
6 Baker asked that the filing be amended to separate the data for each year onto  
7 separate reports.

8 10. On February 23, 2007, the Montana HRDC Directors Association filed its  
9 2006 calendar-year-end report. Because the report was filed 5 business days late  
10 (Monday, the 19<sup>th</sup> being a holiday), a \$250 civil penalty was assessed.

11 11. The Montana HRDC Directors Association requested a hearing to contest  
12 the civil penalty. The Commissioner issued a Notice of Agency Action and  
13 Opportunity for Hearing on May 1, 2007.

14 12. The Montana HRDC Directors Association filed a written Waiver of  
15 Hearing and submitted a written statement for the Commissioner's consideration.  
16 Principal authority Bob Buzzas, writing on behalf of the Association, asserts that the  
17 necessary information was provided, albeit incorrectly combined on one form, and  
18 that additional penalties are not merited.

### 19 CONCLUSIONS OF LAW

20 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604  
21 and 5-7-306, MCA.

22 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

23 3. § 5-7-306, MCA, provides:

24 **Civil penalties for delays in filing -- option for hearing --**  
25 **suspension of penalty.** (1) In addition to any other penalties or  
26 remedies established by this chapter, a person who fails to file a report  
27 within the time required by this chapter is subject to a civil penalty of  
\$50 for each working day that the report is late until the report is filed  
or until the penalties reach a maximum of \$2,500 for each late report.

1 The person against whom a penalty is assessed may request an informal contested  
2 case hearing before the Commissioner. At the hearing, the Commissioner is  
3 required to consider any factors or circumstances in mitigation, and may reduce or  
4 waive the civil penalty. § 5-7-306(3), MCA.

5 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with  
6 the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .” It  
7 “must include all payments made in that calendar year prior to February 1.” § 5-7-  
8 208(4), MCA, states that if no payments are made during the reporting period, “the  
9 principal shall file a report stating that fact.”

10 5. A non-legislative session year-end lobbying disclosure report (form L-5B)  
11 must be filed with the Commissioner by February 15<sup>th</sup> of the next calendar year.  
12 § 5-7-208(3)(a), MCA. Therefore, both the January, 2007 session report and the  
13 2006 year-end report were due February 15, 2007.

#### 14 **MEMORANDUM OPINION**

15 Two reports were required to be filed by the Montana HRDC Directors  
16 Association on or before February 15, 2007. The reports were erroneously combined  
17 on just one form L-5A, which was filed late. Subsequently, the data was correctly  
18 reported on two separate forms.

19 Since the required information was reported to the Commissioner and just a  
20 portion was reported on the wrong form, a reduction of the fine for the two days it  
21 took to correct the error is granted. However, the \$150 fine for filing both the 2006  
22 L-5B and the 2007 initial L-5A three days late is warranted and must be paid.

23 I urge principals to carefully review and understand the statutory filing  
24 requirements to ensure that they are in compliance with the law and to avoid the  
25 assessment of civil penalties in the future.  
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DATED this 26<sup>th</sup> day of July, 2007.

Dennis Unsworth  
Commissioner of Political Practices

## CERTIFICATE OF SERVICE

Bob Buzzas  
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Kym Trujillo  
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